

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

SDMS Document



112455

-----X
In the Matter of :
Occidental Chemical Corporation :
Respondent : ADMINISTRATIVE ORDER
Proceeding under Sections 104 : ON CONSENT
and 122 of the Comprehensive :
Environmental Response, Compensa- :
tion and Liability Act, 42 U.S.C. : Index No. II CERCLA-80216
§§9604, 9622 : (Hooker Chemical/
Ruco Polymer Corp. Site)
-----X

I. JURISDICTION

This Administrative Order on Consent ("Order") is issued to the above-captioned Respondent pursuant to the authority vested in the President of the United States under Sections 104(a) and (b), 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§9604(a), 9604(b), 9622(a), 9622(d)(3), which authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") and duly redelegated to the Regional Administrator, EPA Region II. Notice of this Order and the negotiations preceding its issuance was provided to the New York State Department of Environmental Conservation ("NYSDEC").

II. FINDINGS

EPA finds that:

1. The Hooker Chemical/Ruco Polymer Site also known as the Hooker/Ruco Site (hereinafter referred to as the "Hooker/Ruco Site" or the "Site") is located in the Town of Hicksville, Nausau County, New York. It is bordered by Commerce Plaza on the north, New South Road on the west, tracks of the Long Island Railroad on the southwest and a Grumman Aerospace facility on the east. The Site covers approximately 14 acres.
2. The Site is included on the National Priorities List, 40

HRC 001 1288 F

C.F.R. Part 300, Appendix B, which has been issued pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. §9605(a)(8)(B).

3. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9). There are several buildings and structures on the Site.

4. Respondent is a person as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21) and was the owner and operator of the Site during a portion of the time that hazardous substances were disposed of at the Site. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

5. Located on the Site is an active chemical manufacturing facility. The Site is located in an industrial area.

6. The Site is located on Long Island, New York. The aquifers underlying Long Island have been designated as sole source aquifers under the Safe Drinking Water Act, 42 U.S.C. §300f et seq. See 43 Fed. Reg. 26611 (1978). Pursuant to Section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. §300h-3(e), a sole source aquifer can be designated if it is the sole or principal drinking water source for an area and, if contaminated, it would create a significant hazard to public health. At least 7 municipal supply wells are located within a 2 mile radius of the Site. Ground water flow in the area is in a generally southerly direction.

7. Since at least the early 1950s the Site has been used for the manufacture of various chemicals and chemical products. Products which have been manufactured at the Site include polyvinyl chloride ("PVC") resins, synthetic rubber, polyurethane and plasticizers.

8. Among the materials that have been or are presently used at the Site are trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), vinyl chloride, toluene, polychlorinated biphenyls ("PCBs"), styrene, phenols, various organic acids and cadmium. Each of these substances is a hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

9. Reports of the operators of the facility, NYSDEC and the Nassau County Department of Health state that disposal of hazardous substances, as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), has occurred at the Site. Among the substances reportedly disposed of at the Site are TCE, PCE, vinyl chloride, phenols, and PCBs.

10. Investigations conducted by NYSDEC and Leggette Brashears and Graham have detected hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14), in both soil and ground water at the Site. The hazardous substances detected in soil include PCBs, phthalates and PCE. The hazardous substances detected in ground water include vinyl chloride, TCE,

PCE, tetrahydrofuran, 1,2-trans-dichloroethylene, styrene, methyl ethyl ketone ("MEK") and cadmium.

11. Human exposure to the hazardous substances at the Site could result from contact with both contaminated ground water and soil.

12. Ingestion, inhalation or direct contact with hazardous substances detected at the Site may cause a variety of adverse human health effects.

13. The past and/or possible future migration of the hazardous substances found at the Site to surrounding soils and groundwater constitutes an actual release or threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

14. Respondent has been given an opportunity to discuss with EPA the basis for issuance of this Order and its terms. EPA has determined that the Respondent is qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. §9604(a).

III. DETERMINATION

15. Based on the Findings set forth above and the entire administrative record, and pursuant to Sections 104(a), 104(b), 122(a) and 122(d)(3) of CERCLA, 42 U.S.C. §§9604(a), 9604(b), 9622(a), 9622(d)(3), the Regional Administrator has determined that the release and threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health and welfare and the environment.

IV. ORDER

16. Based on the foregoing, it is hereby ordered and agreed that Respondent shall undertake a Remedial Investigation ("RI") and Feasibility Study ("FS") to determine the nature and extent of any threat to public health or welfare or the environment presented by releases or threatened releases of hazardous substances at the Site (RI) and to evaluate proposed remedies at the Site (FS) in accordance with the requirements set forth below. All activities required by this Order shall be completed as soon as possible even though maximum time periods for their completion are set forth herein and in the EPA-approved Field Operations Plan and FS Work Plan referred to below.

Remedial Investigation

17. Attached to this Order as Appendix 1 and incorporated herein is a document entitled "Final Work Plan, Remedial Investigation/Feasibility Study, Hooker/Ruco Site, Town of Hicksville, Nassau County, New York", dated August, 1988 ("RI/FS Work Plan") which sets forth all work necessary for conducting a Remedial

HRC
001
1290

Investigation ("RI") and Feasibility Study ("FS") at the Hooker/Ruco Site. Respondent shall conduct the RI in accordance with all laws, rules, regulations, and EPA guidance documents applicable at the time the activity is conducted.

18. Respondent shall perform the RI, which is generally set forth in Tasks 1 through 8 of the RI/FS Work Plan, in conformance with the RI/FS Work Plan.

19. Task 1 of the RI/FS Work Plan includes the development of the RI/FS Work Plan itself. Respondent is not required to develop the RI/FS Work Plan.

20. Task 1 of the RI/FS Work Plan includes the development of a Field Operations Plan ("FOP"). Within 30 calendar days of the effective date of this Order, Respondent shall submit a draft FOP to EPA for review and comment. The draft FOP shall fully describe how the activities of the RI will be conducted and shall include, but not necessarily be limited to, the following items:

- a. a full description of all the work set forth in the RI/FS Work Plan, except for (1) the development of the RI/FS Work Plan, (2) that portion of Task 2 which is the development and conduct of a Community Relations Plan which will be undertaken by EPA, and (3) Task 6 which is the development and conduct of a Risk Assessment which will be undertaken by EPA;
- b. a map of the Site depicting all sampling locations;
- c. an identification of contractors and subcontractors and their respective responsibilities for performance of the specific tasks set forth in the RI/FS Work Plan;
- d. a description of the chain of custody procedures to be followed, which shall conform to those set forth in Section 1.3 of the EPA publication entitled "Test Methods for Evaluating Solid Waste," 2nd ed. (which is commonly known by its EPA document number "SW-846");
- e. the curricula vitae of all professionals expected to participate in the RI, together with a description of the responsibilities and the anticipated levels of effort of each of those professionals;
- f. a plan for those tasks of the FS that, pursuant to the RI/FS Work Plan, are to be conducted concurrently with the RI; and
- g. a detailed schedule for the performance of the specific tasks of the RI/FS if different than the schedule set

HRC
001
1291

forth in Figure 5-2 of the RI/FS Work Plan.

21. EPA shall review the draft FOP and comment upon it in writing. Within 30 calendar days of receipt of EPA's comments, Respondent shall amend the FOP as required by EPA's comments or as otherwise agreed upon by EPA and shall resubmit the amended FOP to EPA.

22. Following the completion of the Phase I RI, Respondent shall submit a draft Interim RI Report to EPA for review and approval which shall detail the results of the Phase I RI. The draft Interim RI Report shall be used by EPA, in part, to determine the need to conduct the Phase II RI.

23. Upon receipt of the draft Interim RI Report, EPA will review the report and comment thereon in writing. Within 30 calendar days of receipt of EPA's comments, Respondent shall amend the draft Interim RI Report as required by those comments or as otherwise agreed upon by EPA, and shall submit the amended report ("Interim RI Report") to EPA.

24. EPA's comments on the draft Interim RI Report may require Respondent to perform such additional work as EPA finds reasonably necessary to complete the Phase I RI in conformance with the RI/FS Work Plan. Such work, including any necessary work plans and reports, shall be performed by Respondent in conformance with a schedule approved by EPA.

25. EPA's determination of the need for and extent of a Phase II RI shall be based upon the requirements reasonably necessary to complete an RI as defined in paragraph 16 above.

26. Following the completion of any Phase II RI, Respondent shall submit a draft RI Report to EPA for review and approval which shall detail the results of the both the Phase I and II RIs.

27. Upon receipt of the draft RI Report, EPA will review the report and comment thereon in writing. Within 30 calendar days of receipt of EPA's comments, Respondent shall amend the draft RI Report as required by those comments or as otherwise agreed upon by EPA, and shall submit the amended report ("RI Report") to EPA.

28. EPA's comments on the draft RI Report may require Respondent to perform such additional work as EPA finds necessary. Such work, including any necessary work plans and reports, shall be performed by Respondent in conformance with a schedule approved by EPA.

29. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the FOP and the drafts and the final versions of the Interim RI Report and the RI Report ("the

RI reports") and any supplementary submissions prepared concerning the RI reports, and, consistent with the definition of the RI as set forth in paragraph 16 above, EPA may modify the FOP and the RI reports or require additional work and reports unilaterally. At such time as EPA determines that the FOP or the RI reports are acceptable, EPA will transmit to Respondent a written statement to that effect and the document will be deemed to be a final document.

Risk Assessment

30. Respondent shall submit all data collected during the RI to EPA. EPA shall use the data in developing a Risk Assessment which shall determine any risk posed by the Site to public health or welfare or to the environment.

Feasibility Study

31. Respondent shall conduct the FS, which is generally set forth in Tasks 9 through 11 of the RI/FS Work Plan, in accordance with the RI/FS Work Plan.

32. Within 30 calendar days after receiving authorization from EPA, Respondent shall submit to EPA for review and approval a detailed work plan for the conduct of the FS ("Detailed FS Work Plan"). The Detailed FS Work Plan shall provide for the performance of the FS in conformance with all laws, rules, regulations, and EPA guidance documents applicable at the time the activity is conducted. Specifically, the FS shall be conducted in conformance with the RI/FS Work Plan, all the requirements of CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300 et seq., and any amendments to CERCLA or the NCP, and applicable EPA guidance documents. The Detailed FS Work Plan shall also include a schedule for each task of the FS. The Detailed FS Work Plan may exclude work already undertaken pursuant to the FOP.

33. EPA shall review the Detailed FS Work Plan and comment upon it in writing. Within 30 calendar days after receiving EPA's comments, Respondent shall amend the Detailed FS Work Plan as required by EPA's comments or as otherwise agreed upon by EPA and shall submit the amended Detailed FS Work Plan to EPA.

34. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the Detailed FS Work Plan, and EPA may modify it unilaterally. At such time as EPA determines that the Detailed FS Work Plan is acceptable, EPA will transmit to Respondent a written statement to that effect.

35. In conformance with the schedule included in the Detailed FS Work Plan, Respondent shall submit to EPA for review and approval an FS report as specified in Task 11 of the RI/FS Work

Plan ("Preliminary FS Report"), which shall document that the FS was conducted according to all applicable laws, rules, regulations, and EPA guidance.

36. EPA will review the Preliminary FS Report and comment upon it in writing. Within 30 calendar days of receipt of EPA's comments, Respondent shall amend that report to conform with such comments or as otherwise agreed upon by EPA and shall submit the revised report to EPA.

37. EPA's comments on the Preliminary FS Report may require that Respondent conduct such additional evaluations, including but not limited to the development of conceptual designs of certain remedial alternatives, or other work as EPA finds necessary. Such work, including any necessary work plans and reports, shall be performed in accordance with a schedule approved by EPA.

38. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the Preliminary FS Report and any supplementary submissions prepared concerning the Preliminary FS Report and EPA may modify the Preliminary FS Report or require additional work and reports unilaterally. At such time as EPA determines that the Preliminary FS Report is acceptable, EPA will transmit to Respondent a written statement to that effect, and the report will be deemed the Draft FS Report.

39. Following submittal of the Draft FS Report, EPA will announce the availability of the final Interim RI Report, the final RI Report and the Draft FS Report to the public for review and comment. Following such comments, EPA will determine if the reports should be modified or additional work performed and will notify Respondent in writing of its determination. In the event that EPA determines that any of the reports needs to be modified or additional work performed, Respondent shall modify the report(s) or perform the additional work as directed by EPA and shall submit the modified report(s) to EPA. EPA shall remain the final arbiter in any dispute regarding the sufficiency or acceptability of any draft, preliminary or final RI or FS report, and, consistent with the definitions of the RI and FS as set forth in paragraph 16 above, EPA may modify the reports or require the performance of additional work unilaterally.

40. EPA will make the final selection of the remedial alternative(s) to be implemented with respect to the Site.

Financial Assurance

41. At least 7 calendar days prior to the performance of any work under this Order by each of Respondent's contractors and subcontractors, Respondent shall submit a certification that

the contractors and subcontractors have adequate insurance coverage or indemnification for any liability which may result from the RI/FS activities to be conducted by them. The adequacy of insurance coverage or indemnification shall be determined by EPA which shall not withhold approval of such insurance or indemnification unreasonably.

Notification And Reporting Requirements

42. Respondent shall provide monthly written progress reports to EPA by the 10th day of every month following the effective date of this Order. The progress reports shall develop a chronological record of Site activities.

43. All work plans, reports and other documents required to be submitted to EPA under this Order shall be sent certified mail, return receipt requested, to the addressees below. Monthly written progress reports need only be sent to the first addressee below.

6 copies: Mel Hauptman
Site Compliance Branch
Emergency and Remedial Response Division,
United States Environmental Protection Agency
Region II
26 Federal Plaza, Room 747
New York, NY 10278
(telephone: (212)264-7681)

1 copy: Gregory C. Snyder
New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region II
26 Federal Plaza, Room 437
New York, NY 10278
(telephone: (212)264-8157)

44. Correspondence from Respondent to EPA, other than that described in paragraph 43 above, need only be sent to the first addressee in paragraph 43 above.

45. Respondent shall give EPA 10 calendar days advance notice of the following expected activities under this Order: drilling, installation and testing of all monitoring wells and all on-site and off-site sampling activities.

46. All reports and other documents produced by Respondent and submitted to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent and determined by EPA to merit confidential treatment,

in accordance with 40 C.F.R. Part 2, Subpart B. In addition, EPA may release all such documents to NYSDEC and NYSDEC may make those documents available to the public unless Respondent conforms with appropriate New York law and regulations regarding confidentiality. No sampling and monitoring data or hydrological or geological data shall be considered confidential.

47. Respondent shall use its best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order. Respondent shall provide written notification to EPA of any circumstances which have caused or which Respondent believes are likely to cause a delay in performance. Such written notice: (a) shall be provided as soon as possible, but not later than 7 calendar days after the date when Respondent learned or should have learned of the occurrence of such circumstances; (b) shall be accompanied by all available pertinent documentation, including, but not limited to, third-party correspondence; and (c) shall include (i) a description of the circumstances causing or potentially causing the delay; (ii) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; and (iii) the date by which or time period within which Respondent proposes to complete the delayed activities. Such notification does not relieve Respondent of any of its obligations under this Order.

Respondent's Site Coordinator and Other Personnel

~~48. Not later than 7 calendar days after the effective date of~~ this Order, Respondent shall select an individual to be known as the Site Coordinator and shall notify EPA in writing of the name, address, qualifications, job title and telephone number of the Site Coordinator. The Site Coordinator shall be responsible for oversight of the implementation of this Order. The Site Coordinator shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. EPA correspondence to the Respondent with respect to this Order will be sent to the Site Coordinator.

49. All activities required of Respondent under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments.

Access and Availability of Data

50. Respondent shall be responsible for obtaining in a timely fashion such access to the Site and any other premises where work under this Order is to be performed as is necessary for Respondent to carry out the requirements of this Order. This Order does not convey any rights of access to Respondent. In the event that access agreements are not obtained by Respondent,

Respondent shall immediately notify EPA, in writing, regarding the fact that access has not been obtained and setting forth Respondent's efforts to obtain access. If Respondent is unable to obtain access, EPA shall assist in obtaining access.

51. EPA and its designated representatives, including but not limited to their employees, agents, contractors and consultants, shall be permitted to observe the work carried out pursuant to this Order. Respondent shall provide EPA and its designated representatives with access to and freedom of movement at the Site and any other premises under the ownership or control of Respondent where work under this Order is performed, including premises to which Respondent has gained access, at all reasonable times, including, but not limited to, any time that work under this Order is being performed, for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondent, or for any other purpose reasonably related to EPA oversight of the implementation of this Order. With respect to any other premises where work under this Order is performed but which are not under the ownership or control of Respondent, Respondent shall not interfere with EPA access to such premises, and to the maximum extent practicable, shall support and assist EPA in obtaining access to such premises. Notwithstanding the above, EPA hereby retains all of its inspection authority under CERCLA, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq. and any other applicable statute. NYSDEC and its designated representatives shall be eligible to be designated representatives of EPA under this paragraph.

52. All data, information and records created or maintained by Respondent or its contractors or consultants in connection with implementation of the work under this Order, including but not limited to contractual documents, shall, without delay, be made available to EPA on request. Further, EPA shall be permitted to copy all such documents. In addition, no such data, information, or records shall be destroyed for 6 years after completion of the work required by this Order without either the express written approval of EPA or a written offer by the Respondent to provide such material to EPA, followed by EPA's written rejection of that offer. Notwithstanding the foregoing, Respondent is not obligated to provide any documents which are attorney work product or which are subject to the attorney-client privilege under Federal law.

53. Upon request by EPA, Respondent shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order.

54. Respondent and its employees, agents, contractors and consultants shall cooperate with EPA in its effort to oversee Respondent's implementation of this Order.

General Provisions

55. This Order shall apply to and be binding upon Respondent and Respondent's officers, directors, receivers, trustees, successors and assigns.
56. All actions performed by Respondent pursuant to this Order shall be carried out in conformance with all federal, state, and local laws, regulations, requirements and guidances applicable at the time of the action, including, but not limited to, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300 (1987), and any amendments thereto.
57. All work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.
58. Respondent shall be responsible for obtaining all necessary permits, licenses and other authorizations.
59. All reports, work plans and other writings required under the terms of this Order, upon approval by EPA, shall be deemed to be incorporated into this Order.
60. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondent or Respondent's officers, directors, employees, agents, contractors, consultants, receivers, trustees, successors or assigns in carrying out any action or activity pursuant to this Order; nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out any activities pursuant to this Order.
61. Respondent agrees to indemnify and hold harmless EPA and the United States Government, its agencies, departments, agents and employees, from all claims, causes of action, damages and costs of any type or description by third parties for any injuries or damages to persons or property resulting from acts or omissions of Respondent, its officers, directors, officials, agents, servants, receivers, trustees, successors or assigns, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondent.
62. Nothing herein shall constitute or be construed as a satisfaction or release from liability for Respondent or Respondent's directors, officers, employees, agents, contractors, consultants, receivers, trustees, successors or assigns or for any other individual or entity. Nothing herein shall constitute a finding that Respondent is the sole responsible party with respect to the release and threatened release of hazardous substances from the Site.

63. Nothing contained in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

64. Respondent agrees not to make any claims pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§9606(b)(2), 9611, 9612, either directly or indirectly, for reimbursement from the Hazardous Substance Superfund of costs incurred by it in complying with this Order.

65. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), and 40 C.F.R. §300.25(d).

66. No informal advice, guidance, suggestions or comments by EPA shall be construed to relieve Respondent of any of its obligations under this Order.

67. Respondent's activities under this Order shall be performed within the time limits set forth herein, including those in the RI/FS Work Plan, the FOP and the Detailed FS Work Plan, or otherwise established or approved by EPA, unless performance is delayed by events which constitute a force majeure. For purposes of this Order, force majeure is defined as any event arising from causes beyond Respondent's control. Financial considerations shall not be considered circumstances beyond the control of Respondent. When an event constituting a force majeure occurs, Respondent shall perform the affected activities within a time period which shall not exceed the applicable time period for the activities, together with the period of delay attributed to the force majeure; provided, however, that no deadline shall be extended beyond a period of time that is reasonably necessary. Respondent shall verbally notify the first EPA representative identified in paragraph 43 above as soon as possible after discovering that circumstances that may constitute a force majeure have occurred or are likely to occur. If the EPA representative cannot be reached, Respondent shall leave a message at his office. In addition, Respondent shall notify that EPA representative in writing as soon as possible, but not later than 7 calendar days after the date when Respondent become aware of the circumstances alleged to constitute a force majeure. Such written notice shall be accompanied by all available pertinent documentation, including, but not limited to, third-party correspondence, and shall contain the following: 1) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond its control; 2) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; and 3) the date by which or the time period within which Respondent proposes to complete the delayed activities. Respondent's failure to timely and properly notify EPA as required by this paragraph shall render the remaining provisions of this paragraph null and void insofar as they may entitle Respondent to an extension

of time. The burden of proving that an event constituting a force majeure has occurred shall rest with the Respondent.

68. This Order may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by EPA.

Reimbursement

69. After the end of each federal fiscal year in which oversight costs relating to this Order and/or the RI/FS at the Site are incurred by the United States Government, EPA will transmit to Respondent an itemized accounting of all such costs that were incurred during the previous year. These accountings will include, but not be limited to, the cost of oversight of Respondent's implementation of the requirements of this Order, the cost of a risk assessment and health assessment of the Site, and the cost of EPA's community relations activities, and will include both direct and indirect costs. Respondent shall, within 30 calendar days of receipt of each such accounting, remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund
P.O. Box 371003M
Pittsburgh, PA 15251

Such payment shall also be accompanied by a letter of explanation including the name and address of Respondent, the name of the Site (the Hooker/Ruco Site), the EPA Region number (EPA Region II) and a reference to the docket number of this Order; a copy of the letter shall be sent to the addressees listed in paragraph 43 above.

Enforcement

70. Failure of Respondent to comply with any of the requirements of this Order may result in EPA taking the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604.

71. If Respondent fails, without prior EPA approval, to comply with any of the time limits set forth or established pursuant to paragraphs 20 through 39 above, and such failure is not excused under the terms of paragraph 67 above, Respondent shall pay a stipulated penalty to EPA in the amount indicated below for each calendar day of noncompliance:

<u>Days After Required Date</u>	<u>Stipulated Penalty</u>
0 to 5 days	\$ 0.00
6 to 10 days	\$ 500.00
11 to 20 days	\$ 1,000.00
21 to 30 days	\$ 2,000.00
31 days or more	\$ 5,000.00

Any such penalty shall accrue as of the first day after the applicable deadline has passed, and shall continue to accrue until the noncompliance is corrected. Such penalties shall be due and payable 10 calendar days following receipt of a written demand by EPA or, if no such demand is received, on the 30th day following the date the penalty accrues, and shall be due and payable every 30th day thereafter. Payment of any such penalty to EPA shall be made by cashier's or certified check made payable to the "Hazardous Substance Superfund," with a notation of the docket number of this Order, and shall be mailed to the address set forth in paragraph 69 above. A letter stating the basis for the penalties, the name and address of Respondent, the name of the Site (the Hooker/Ruco Site) and the EPA Region number (EPA Region II) shall accompany each such payment; a copy of the letter shall be mailed to the addressees listed in paragraph 43 above.

72. Notwithstanding any other provision of this Order, EPA reserves its right to bring an action against Respondent or any other responsible parties pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, ~~for recovery of any costs incurred in~~ oversight of Respondent's implementation of this Order, and any other response costs incurred by the United States Government with respect to the Site.

73. Notwithstanding any other provision of this Order, EPA reserves its right to take enforcement actions against Respondent or any other responsible parties, including, but not limited to, actions for monetary penalties for any violation of law or of this Order. Such enforcement actions may include, though need not be limited to, actions pursuant to Sections 107(c)(3) and/or 109 of CERCLA, 42 U.S.C. §§9607(c)(3), 9609.

74. Nothing herein shall preclude EPA from taking any additional enforcement actions and/or additional removal or remedial actions as it may deem necessary or appropriate for any purpose, including, but not limited to, the investigation, prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site.

DISPUTE RESOLUTION

75. If Respondent, in good faith, disagrees, in whole or in

HRC 001 1301

part, with EPA's comments upon the POP, the draft Interim RI Report, the draft RI Report, the Detailed FS Work Plan, or the Preliminary FS Report (such comments occurring either before or after the receipt by EPA of comments from the public on such documents pursuant to paragraph 39 above) Respondent shall notify EPA in writing of its objections and the bases therefore within 14 calendar days after receipt of EPA's comments. If Respondent so notifies EPA within the 14 calendar day time period, EPA shall provide a written response to Respondent setting forth EPA's position and the basis for that position. EPA's written response shall constitute the resolution of the dispute for purposes of the work required by this Order. If the dispute and its resolution cause a delay that causes Respondent to fail to meet a time period set forth or established pursuant to this Order, that time period shall be extended by a period of time not to exceed the delay resulting from the dispute and its resolution; provided, that Respondent shall not be entitled to any such extension if EPA determines that Respondent's disagreement with EPA's comments is not in good faith or otherwise lacks a reasonable basis. Notwithstanding any of the foregoing, if Respondent requests an extension of a time period set forth in or established pursuant to this Order, and if EPA declines to grant an extension in response to such request, and delay caused solely by the resolution of such a dispute shall not entitle Respondent to an extension of time. In addition, EPA will be the final arbiter of all disputes under this Order and the final arbiter as to the sufficiency and acceptability of all work conducted pursuant to this Order. However, nothing in this paragraph shall affect any rights that Respondents may have to judicial review of EPA's actions or determinations under this Order, and, except as provided in paragraph 78 of this Order, EPA and Respondent expressly reserve all rights and defenses that they may have pursuant to applicable law.

Termination and Satisfaction

76. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that all of the terms of this Order, including any additional work that EPA has determined to be necessary, have been satisfactorily carried out.

Effective Date and Effect of Consent

77. This Order shall become effective on the 3rd business day after it is signed by the Regional Administrator or Acting Regional Administrator of EPA Region II, and all times for performance of actions or activities to be performed under this Order shall be calculated from said effective date.

78. Respondent agrees to undertake all actions required by the terms and conditions of this Order. Respondent agrees not to

HRC 001 1302

contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue this Order, and also agrees not to contest the validity or terms of this Order in any action to enforce its provisions. However, Respondent does not admit any of the factual or legal findings, conclusions and determinations made by EPA in this Order and reserves any rights and defenses which it may have regarding liability or responsibility in any proceedings regarding the Site other than proceedings to enforce this Order.

U.S. ENVIRONMENTAL PROTECTION AGENCY

William J. Muszynski

William J. Muszynski, P.E.

Acting Regional Administrator

U.S. Environmental Protection Agency
Region II

Sept 21, 1988
Date

HRC
001
1303

CONSENT

The Respondent identified below has had an opportunity to confer with EPA to discuss this Order. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the signatory to this Order certifies that he or she is fully authorized to agree to the terms and conditions of this Order and to legally bind the Respondent represented by him or her.

OCCIDENTAL CHEMICAL CORPORATION

Michael J. Rudick
(signature)

September 19, 1988
DATE

Michael J. Rudick
(printed name of signatory)

Vice President and General Counsel
(title of signatory)

HRC 001 1304 *L*